

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10

11 LOPEZ TAX SERVICE, INC., et al.,  
12

13 Plaintiffs,  
14

15 v.  
16

17 INCOME TAX SCHOOL, INC.,  
18

19 Defendant.  
20

Case No.: C-12-02654 JSW (JSC)

**ORDER RE: JOINT DISCOVERY  
LETTER**

21 The Court is in receipt of the parties' joint discovery letter concerning the deposition of Sandra  
22 Barrett. (Dkt. No. 60.) After carefully considering the parties' arguments, the Court concludes that a  
23 deposition of Barrett is warranted.

24 Plaintiffs assert that Barrett, a former employee of the predecessor company to  
25 Defendant/Counter-Claimant Income Tax School, Inc., was the original author of four of the eight  
26 allegedly infringing works at issue in this action. The works in question are all training materials for  
27 income tax professionals, which Plaintiffs contend include non-copyrightable IRS materials.  
28 Plaintiffs assert that Barrett's deposition is necessary because, "[s]ince the basis for any copyright of  
those works is as a compilation or a derivative, only this witness can identify what original material or  
what original selection and arrangement of pre-existing government publications was created and


1 therefore what is the basis of ITS['] copyrights.” (Dkt. No. 60 at 1.) Defendant does not argue that  
2 Barrett’s deposition is irrelevant or unimportant to the case; rather, Defendant contends that Plaintiffs’  
3 request to depose Barrett should be denied because the request occurred on June 13, 2013, well after  
4 the June 3 discovery cut-off, and Plaintiffs knew or should have already known of Barrett’s  
5 importance to the case months earlier.

6 Although Plaintiffs likely should have realized during the parties’ depositions in December  
7 that Barrett played a significant role in the development of some of the infringing works, Defendant  
8 has failed to show how it would be prejudiced if Barrett were to be deposed now. Summary judgment  
9 briefs are not scheduled to be filed until August 30, 2013, with a planned hearing for October 25,  
10 2013. If her deposition is taken within the next few weeks, the parties’ schedule will be unaffected.  
11 Further, it appears that Defendant’s own tardiness in responding to Plaintiffs’ interrogatories may  
12 have contributed to Plaintiffs’ delayed deposition request. (*See* Dkt. No. 60 at 5 (“ITS answered the  
13 Lopez Parties’ interrogatories on June 3, nearly two weeks after the May 22 due date and the day fact  
14 discovery closed.”).)

15 Given her apparent significance to the case, deposing Barrett will contribute to a fair  
16 determination of this action. Plaintiffs’ request is accordingly GRANTED.

17  
18 IT IS SO ORDERED.

19  
20 Dated: July 15, 2013

21   
22 JACQUELINE SCOTT CORLEY  
23 UNITED STATES MAGISTRATE JUDGE  
24  
25  
26  
27  
28